

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DR. ANA I. ALVARADO-SANTOS

Plaintiff

vs

CIVIL 04-2024CCC

DEPARTMENT OF HEALTH OF THE
COMMONWEALTH OF PUERTO RICO
JOHNNY RULLAN, M.D.

HECTOR MENA-FRANCO, M.D.
FRANCISCO RODRIGUEZ-PICHARDO,
M.D.

In their official and personal capacity

Defendants

O R D E R

This action alleging gender and nationality discrimination was filed pursuant to Title VII of the Civil Rights Act of 1964 and Puerto Rico law. It is now before us on defendants Department of Health of Puerto Rico, Dr. Héctor Mena-Franco, and Dr. Francisco Rodríguez-Pichardo's motion to Dismiss Pursuant to Fed. R. Civ. P. 12 (b)(6) filed December 31, 2004 (**docket entry 8**), which plaintiff opposed (**docket entry 9**).

The Department of Health concedes that it is subject to suit in federal court on the Title VII claim.¹ Similarly, plaintiff concedes that the Department of Health has the Eleventh Amendment immunity as to claims brought under three Puerto Rico laws: Law 100, 29 L.P.R. § 146, et seq., Law 69, 29 L.P.R.A. § 1321 and Article 1802 of the Civil Code of Puerto Rico, 31 L.P.R.A. § 5141. She also acknowledges that Title VII does not provide cause of action against defendants Mena-Franco and Rodríguez-Pichardo.² Therefore, the only remaining issues before us are the claims under Puerto Rico law against Mena and Rodríguez-Pichardo.

¹Motion to Dismiss, p.6 ¶3.

²Opposition, p. 2 ¶4.

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Plaintiff argues, among other things, that her remaining causes of action arise from the same factual scenario that engendered her Title VII claim that we should exercise our pendant party jurisdiction. Since the local claims against the Department of Health under Law 100, Law 69 and Article 1802 must be pursued in the Commonwealth courts, plaintiff shall include as individual defendants in that case Mena and Rodríguez-Pichardo for her cause of action under those statutes.

For the above stated reasons, the Motion to Dismiss (**docket entry 8**) is GRANTED in part and DENIED in part. The Motion is DENIED as to the Title VII claim against the Department of Health and GRANTED as to all other claims. Accordingly, the claims against the Department of Health pursuant to Law 100, Law 69 and Article 1803 are DISMISSED, without prejudice. The Title VII claims against Drs. Mena and Rodríguez-Pichardo are DISMISSED, with prejudice. The claims against Drs. Mena and Rodríguez-Pichardo pursuant to Law 100, Law 69, and Articles 1802 and 1054 of the Civil Code of Puerto Rico are DISMISSED, without prejudice.

SO ORDERED.

At San Juan, Puerto Rico, on August 24, 2005.

S/CARMEN CONSUELO CEREZO
United States District Judge